IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1081 of 2007

Balan .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Vellore District
Vellore-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.C.C.Chellappan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Dinakaran, son of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the father of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu, now detained in Central Prison, Vellore under Tamil Nadu Act 14 of 1982 vide detention order dated 17.7.2007 on the file of the second respondent herein made in C3.D.O.No.55 of 2007, to quash the same as

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illegal and consequentially to direct the respondents herein to produce the detenu before this Court and to set him at liberty.

3.1. The order of detention dated 17.7.2007 was passed on the basis of ground case in Crime No.336 of 2007 for alleged commission of offences under Sections 4(1)(i)(aaa), 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 27.6.2007 when the Sub-Inspector of Police Vellore Prohibition Enforcement Wing, Vellore along with his police party observed at Athiyur regarding prohibition cases, they found the detenu pouring some liquid from one plastic can into a tumbler and offered the same to a person, who escaped seeing the police party. The detenu was arrested and he admitted the offences committed. They seized 120 Litres of country arrack from 3 mud pots. The samples of arrack seized were sent for chemical analysis and the report of the Assistant Director and Assistant Chemical Examiner to Government, Regional Forensic Science Laboratory, Vellore reveals that the samples contain 6.5 mgms% w/v of Atropine per 100 ml. a poisonous substance.

3.2. Apart from the above, the detaining authority also took note of the four adverse cases pending against the detenu, viz.,

i. Crime No.15 of 2007 registered on the file of Virinchipuram Police Station for the occurrence said to have taken place on 17.1.2007 for the offences punishable under Sections 4(1)(aaa) and Section 4(1-A)(ii) of the Tamil Nadu Prohibition Act;

ii. Crime No.115 of 2007 registered on the file of Vellore Prohibition Enforcement Wing for the occurrence said to have taken place on 22.2.2007 for the offences punishable under Sections 4(1)(a) of the Tamil Nadu Prohibition Act;

iii. Crime No.55 of 2007 registered on the file of Virinchipuram Police Station for the occurrence said to have taken place on 23.2.2007 for the offences punishable under Sections 4(1)(a) of the Tamil Nadu Prohibition Act; and

iv. Crime No.283 of 2007 registered on the file of Vellore Prohibition Enforcement Wing for the occurrence said to have taken place on 5.6.2007 for the offences punishable under Sections 4(1)(i) of the Tamil Nadu Prohibition Act.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

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5. The learned counsel for the petitioner challenges the order of detention on the ground of non-application of mind on the part of the detaining authority to the fact that while the detenu was arrested on 27.6.2007 at 1000 hours and the First Information Report was registered only at 1300 hours, in the arrest report the Crime No.336 of 2007 is stated.

6. From the materials available on record, as contended by the learned counsel for the petitioner, it is evident that the detenu was arrested on 27.6.2007 at 1000 hours and the First Information Report was registered at 1300 hours, but in the arrest report the Crime No.336 of 2007 is stated. There is no explanation on the part of the detaining authority as to how the crime number came to be mentioned in the arrest report, which was three hours earlier than the lodging of the F.I.R. The police have not filed any affidavit as to how they got the crime number, viz., by using wireless or cellphone to contact the relevant police station to ascertain the crime number. The absence of any such affidavit filed on behalf of the Sponsoring authority and the failure of the detaining authority to get an explanation on this aspect vitiates the order of detention.

For the aforesaid reason, the petition is liable to be allowed and hence, the same is allowed. The order of detention dated 17.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. STATE OF TAMIL NADU
REP BY ITS SECRY TO GOVT
PROHIBITION AND EXCISE DEPT
CHENNAI -09

2. THE DISTRICT MAGISTRATE AND
DISTRICT COLLECTOR OF VELLORE DISTRICT
VELLORE -09

3. THE SUPERINTENDENT,
ENTRAL PRISON, VELLORE.

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4. THE JOINT SECRETARY TO GOVT,
PUBLIC (LAW & ORDER) DEPARTMENT,
FORT ST GEORGE, CHENNAI-9.

5. THE PUBLIC PROSECUTOR
HIGH COURT, CHENNAI-104.
VRK (co)
sg 13/11/07

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